

E-Filed: January 6, 2015

United States District Court
For the Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MONTEREY BAY MILITARY HOUSING,
LLC, CLARK PINNACLE MONTEREY
BAY LLC, CLARK MONTEREY PRESIDIO
LLC, CALIFORNIA MILITARY
COMMUNITIES LLC, CLARK PINNACLE
CALIFORNIA MILITARY COMMUNITIES
LLC and CLARK IRWIN, LLC,

Plaintiffs,

v.

PINNACLE MONTEREY LLC, PINNACLE
IRWIN LLC, AMERICAN MANAGEMENT
SERVICES CALIFORNIA INC.,
AMERICAN MANAGEMENT SERVICES
LLC D/B/A PINNACLE, GOODMAN REAL
ESTATE, INC., GOODMAN FINANCIAL
SERVICES, INC., STANLEY HARRELSON
and JOHN GOODMAN,

Defendants.

Case No. 14-CV-03953

**ORDER RE DISCOVERY DISPUTE
JOINT REPORT NOS. 1 AND 2**

[Re Docket Nos. 60, 76]

Plaintiffs sue defendants for “a series of systematic frauds” relating to defendants’ management of military housing at the Presidio of Monterey and Fort Irwin. Fourth Amended Complaint, Dkt. No. 1-23, at 2. In Discovery Dispute Joint Report (“DDJR”) #1 plaintiffs seek production of defendant Stan Harrelson’s personal bank records. In DDJR #2 plaintiffs seek

1 production of Joni Calloway's financial records. Ms. Calloway is the wife of a senior manager at
 2 one of the corporate defendants. Defendants object to the requests on privacy and relevancy
 3 grounds. The court denies plaintiffs' request as to Mr. Harrelson, and denies in part plaintiffs'
 4 requests as to Ms. Calloway.

5 **A. Rule 26 Standard**

6 A party is only entitled to discovery of information relevant to the claims or defenses
 7 asserted in the case. Fed. R. Civ. P. 26(b)(1). When fraud or mistake is alleged, relevance must be
 8 assessed in light of the requirements of Rule 9(b), which states: "In all averments of fraud or
 9 mistake, the circumstances constituting fraud or mistake shall be stated with particularity." Fed. R.
 10 Civ. P. 9(b); *Peskoff v. Faber*, 230 F.R.D. 25, 28 (D.D.C. 2005) order clarified, 233 F.R.D. 207
 11 (D.D.C. 2006).

12 **B. The Complaint Does Not Allege Any Fraud Relating to Stan Harrelson's Personal Bank Accounts**

13 Plaintiffs cite to various paragraphs in the Fourth Amended Complaint in support of their
 14 argument that Mr. Harrelson's personal accounts are at issue. Although the complaint does refer to
 15 actions taken by Harrelson, the complaint only refers to money or transactions related to corporate
 16 accounts. *See, e.g.*, ¶¶ 65-66, 84-85 (referring to increased property management fees going to
 17 Pinnacle, not Harrelson). The closest plaintiffs come are allegations related to an alleged insurance
 18 discount. Plaintiffs allege that Harrelson "charged hidden fees" and received discounts related to
 19 insurance on properties "personally owned" by Harrelson. DDJR #1 at 2. The complaint does not
 20 allege that any information relating to the "personally owned" properties would be found in Mr.
 21 Harrelson's personal bank accounts, rather than in other corporate accounts. In fact, the complaint
 22 does not even allege that the properties were "personally owned" by Harrelson, only "owned
 23 (directly or indirectly) by Goodman and Harrelson." Complaint at ¶ 107. The complaint later
 24 specifies LLCs that allegedly benefited from the insurance discounts. *Id.* at ¶ 226; *see also Peskoff*,
 25 230 F.R.D. at 28-29 (noting that complaint failed to implicate defendant's personal accounts when
 26 allegations were only made against defendant's business entities).
 27
 28

1 Plaintiffs also argue that the RICO allegations are sufficient to place Harrelson's personal
 2 bank records at issue. Plaintiffs allege that various defendants, including Harrelson, were
 3 associated-in-fact as an enterprise and benefited from the insurance scheme. Complaint ¶¶ 226-230.
 4 Again, although the complaint contains allegations against Harrelson, none of the those allegations
 5 are tied to his personal bank accounts. Because the complaint does not allege any misconduct
 6 connected to Mr. Harrelson's personal accounts, the discovery plaintiffs seek is not relevant to the
 7 claims or defenses asserted. Fed. R. Civ. P. 26(b)(1). Therefore, the court denies plaintiffs' request
 8 for Mr. Harrelson's personal financial records.¹

9 **C. Joni Calloway's Employment and Financial Records Are Relevant to the**
 10 **Allegations in the Complaint**

11 Ron Calloway is a senior manager at defendant Pinnacle. Records from Mr. Calloway
 12 showed cash deposits of over \$70,000 into his personal bank accounts during the time he was
 13 employed at Pinnacle. Mr. Calloway testified that the cash deposits may have been from his wife's
 14 employers. DDJR #2 at 2. Accordingly, plaintiffs seek Ms. Calloway's bank records and
 15 employment records to discover the source of the cash deposits. Plaintiffs believe that the cash may
 16 be kickbacks from Pinnacle vendors.

17 Ms. Calloway argues that her employment and financial records are not relevant to any
 18 allegations in the complaint, and any suggestion that the cash is from kickbacks is pure speculation.

19 The complaint does allege that "Pinnacle employees pocketed cash from project vendors."
 20 ¶¶ 128-134. Mr. Calloway could be one such employee. Although Mr. Calloway testified that he did
 21 not receive any kickbacks, plaintiffs are entitled to discovery to support their allegations.

22 Plaintiffs' current subpoenas are overly broad. Plaintiffs seek records from Ms. Calloway's
 23 prior employer Wheeler Carpets, her current employer Quality Plumbing, and records from Salinas,
 24 CA banks. Wheeler Carpets was a Pinnacle vendor beginning in 2008. DDJR #2 at 8. Quality
 25 Plumbing has never been a Pinnacle vendor. *Id.* Accordingly, the court will only order production of
 26 Ms. Calloway's employment records from Wheeler Carpets during the time it was a Pinnacle
 27 vendor, as the allegations in the complaint only relate to kickbacks from vendors. The court also

28 ¹ The Court agrees that the parties' stipulated protective order would adequately protect Mr. Harrelson's privacy interests, but the protective order cannot overcome a lack of relevance.

orders production of Ms. Calloway's bank records showing cash deposits, pursuant to the parties' protective order. Plaintiffs may depose Ms. Calloway on the source of the cash deposits.

IT IS SO ORDERED.

Dated: January 6, 2015



Howard R. Lloyd
United States Magistrate Judge